

March 24, 1949

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ARIZONA ATTORNEY GENERAL

Wilson
Mr. David J. Marks
County Attorney
Bisbee, Arizona

Dear Dave:

In your letter to this office dated December 1, 1948, you ask whether the Bisbee High School District (board of trustees) may make payment for construction of an additional room on present school building out of funds budgeted in the annual budget for 1948-49 under the heading "Capital Outlay--Equipment, improvements of sites, additions, alteration, and other" in the total amount of \$38,300.00, out of funds actually derived from state, county or school district levies. You state particularly that the question has arisen as to whether or not payment may be made out of that fund under the provisions of Section 54-431, A.C.A., 1939 in the light of the decision in School District No. 1 v. Whiting, 56 Ariz. 334, 107 P. 2d 1075.

We assume from your letter that there is no question of proper budgeting, but that your concern is whether or not the cost of construction of the bandroom may be paid from any balance in the district funds derived from regular state, county and district levies, as provided in Section 54-431, supra.

The Supreme Court in School District No. 1 v. Whiting, supra, refers specifically to common schools, but since the statutes provide that for the management of high schools, the board of trustees shall have all the powers and duties vested in school trustees, the decision is applicable to both common and high schools. In that case, the court specifically held that there are only two methods whereby a school district may construct new school buildings, but did not mention "repairs", "additions" or "alterations". Those methods are that the board of trustees, when directed to do so by a vote of the district, may pay for such construction by (1) a special tax levy for the purpose, or (2) by issuance of bonds authorized at an election for that purpose, held under statutory authority.

Section 54-431, supra, does provide that if a balance remains in the district school fund after payment of all outstanding warrants and expenses of maintaining a school for eight months during the school year, such balance may be used for repairing the school house or improving the school grounds, or the purchase of school furniture, fixtures, equipment and supplies, and that funds received from sources other than state, county or school district levies may be used in building schools.

The item in question set up by the Bisbee High School board budget seems rather broad in its terms, and under "alterations" probably includes "repair" of school houses. If it is the board's contention that they may expend a portion of the amount so

budgeted, at the end of eight months of the school year, from a balance remaining in the school fund after payment of the items required by Section 54-431, for the purpose of constructing the band-room described in Mr. Hall's letter to your office, we are of the opinion they are in error.

Words and Phrases, Vol. 36, distinguishes between "repairs" and "alterations" or "improvements":

"'Repair' means restoration after decay, waste, injury or partial destruction; supply of loss, reparation; and does not mean alteration or addition."

"'Repair' means to restore to a sound or good state after decay, injury, delapidation, or partial destruction, and is synonymous with 'mend' and 'renovate', but, generally does not mean to alter or change condition or to replace with new or different material."

"The word 'repair' contemplates an existing structure or thing which has become imperfect, and means to supply in the original existing structure that which is lost or destroyed, and thereby restore it to the condition in which it originally existed, as near as may be."

"To 'repair' is to mend, to restore to a sound state whatever has been partially destroyed, to make good an existing thing, restoration after decay, injury or partial destruction. An 'improvement' is a valuable and useful addition, something more than a mere repair or restoration to the original condition."

We are of the opinion that a room such as that described in your letter and Mr. Hall's, although it may be an enlargement of present facilities, is not a "repair" such as contemplated in the statute authorizing the board to "repair" the school house.

In any event, we believe the principles enunciated in School District No. 1 v. Whiting, supra, are applicable, in that a school district must be authorized by a vote of the district for the construction proposed, or by a bond issue therefor.

Yours very truly,

FRED O. WILSON
Attorney General

LORNA E. LOCKWOOD
Assistant Attorney General

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